MORONGO
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MISSION
INDIANS

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Statement of the Honorable Maurice Lyons
Chairman of the Morongo Band of Mission Indians
on S. 1340, the Indian Probate Reform Act of 2001
Before the
Committee on Indian Affairs
United States Senate
May 22, 2002

Thank you Mr. Chairman and Vice Chairman Campbell for inviting the Morongo Band of Mission Indians to provide you with our testimony concerning proposed amendments to the Indian Land Consolidation Act Amendments of 2000. We strongly encourage the Committee to move forward to correct problems that have become apparent under current law.

I would like to begin by thanking Senator Campbell for his request to the Department of Interior to delay implementation of certain provisions of the Indian Land Consolidation Act Amendments of 2000 (the Act) pending further Congressional review of concerns and confusion that have arisen in Indian country about the consequences – both intended and possibly unintended—of those amendments.

As required by the Act, the Department sent out a series of notices to individual tribal members alerting them of expected changes to the rules of intestate succession and inheritance that will constrain the devising of interests on trust and restricted land to non-Indians.

This past February, the Department published in the Federal Register the first of the two notices required before the start of the one-year countdown to application of the Act to the estates of deceased allottees. This notice announced the expected changes to the definition of "Indian" and the rules for passing interests in trust and restricted lands to persons not meeting the new definition of "Indian." Apparently, based upon incorrect information from the BIA, some of our members were given the impression that these rules would begin applying this year, and this was very upsetting and confusing to them.

Although we now agree that further review of these rules is needed, the notices sent to tribal members have had a detrimental impact on our tribe's ability to plan for the future and manage our tribal lands effectively and our tribal members' ability to pass their land down to their children and grandchildren.

The second of the two required notices that must be published in the Federal Register before the start of the 365-day countdown to the application of the new rules is the Secretary's certification that the BIA is prepared to fulfill its responsibilities under the amendments. This certification has not yet been published in the Federal Register. Nonetheless, the BIA in Riverside sent out letters to all allottees informing them that the new rules would apply effective February 19, 2003.

Although this information clearly was incorrect, it, too, has caused widespread confusion and upset among our members. For these reasons, we hope that the Department of Interior will abide by your request and defer the implementation of these provisions until Congress has had an opportunity to consider the changes to the Indian Land Consolidation Act that we are going to talk to you about today.

The Morongo Reservation is located approximately 17 miles west of Palm Springs. Our tribal membership enrollment is 1,200 and the reservation comprises approximately 33,000 acres of trust land, of which 31,115.47 acres are held in trust for the tribe, and 1,286.35 acres are held in trust for individual allottees or their heirs. We are continuing to make inquiries relative to the number of Morongo members that have an interest in trust allotments on our reservation and other reservations. We are also interested to learn how many non-Morongo members hold an interest in trust allotments on the Morongo reservation.

We at Morongo share Congress's desire to preserve the trust status of existing allotments and other Indian lands, and we appreciate this Committee's hard work in 1999 and 2000 to strike a balance in the Indian Land Consolidation Act Amendments of 2000 between the individual property rights and interests of allottees and the sovereign rights and interests of tribal governments. However, there may be a few unintended consequences from this legislation.

For example, because of the way that the Act now defines "Indian," the Morongo Band is faced with having to revise its own membership criteria in order to enable some of our enrolled members to pass their interests in trust allotments to their own children. We should not be forced to amend our membership criteria in order to protect the right of our members' children to continue having interests in their family lands.

There are real life consequences under the present provisions:

Take Morongo tribal member Eva Giordani who is 82 years old. She has two older grandchildren who are enrolled tribal members. They live in Utah. She has two younger grandchildren who are not enrolled. They were born on the reservation, lived here their whole lives and grown up with her. It is breaking her heart that she cannot leave her non-enrolled grandchildren any of her property as it would pass out of trust and that she cannot devise her estate in a way that is fair to her descendants. Eva is very sick these days. She wants to see things resolved so that she knows she can leave her house and land to her youngest granddaughter without seeing it lost as trust land.

Or take Morongo tribal member Yvonne Finley who has worked hard most of her life to build the home she now has on the reservation. She told us: "This has been a nightmare for me and for my family. I was a widow at 29 and have lost my two brothers. My daughter Tina has three children – Cherie, Derek and Vanity but they do not meet the tribe's blood quantum requirements so they are not enrolled. But they are my lineal descendants. They were born and raised here on the rez and they are my life.

I want to leave the home I have worked years to build to them. Why should an unfair regulations take away what is rightfully theirs? I grew up poor and had to work two jobs to realize the dream of my own home. I had to leave the reservation for awhile but it was always my dream to come home and have a real home I could give to my grandchildren. My mother is 74 years old and she saved her own money to put into my house as well because she has the same dream I do. She is so worried she loses sleep over this. I tell her," Mama, don't worry -- we're going to fix this."

I believe we can fix this. We suggest two solutions to the problems created by the 2000 amendments:

First, Congress should adopt for the purposes of ILCA the same definition of "Indian" as it adopted in the Indian Health Care Improvement Act, 25 U.S.C. Sec. 1603:

> (c) "Indian", unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) of this section, except that, such term shall mean any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

Second, the Committee should revive the concept of a "non-Indian estate in Indian land" that would allow the descent and distribution to non-Indians of a unique form of life estate in trust and restrict lands. As you may recall, such an interest was included in the bill reported out of this Committee during the 106th Congress (S. 1586), but was stripped from the bill just prior to full Senate consideration. Under the "non-Indian interest in Indian lands," a non-Indian would be eligible to continue living on the lands or receive a proportionate share of the revenue produced by the parcel of land, but the underlying title to the land would be held in trust for the tribe.

The adoption of a provision allowing even non-Indian devisees to receive a unique estate in Indian lands would leave unimpaired the right of our members and their heirs to devise interests in their trust allotments to whomever they might choose, while preserving the underlying trust status of the land for future reversion to the tribe.

We recognize that this system of devise could potentially lead to greater fractionalization of possessory interests in Indian lands, but at least the underlying ownership would not be further fragmented. Once the BIA's record-keeping and data processing capabilities have been restored to proper functioning, there should be no insurmountable difficulties in tracking these unique estates.

We believe this solution will help our tribal members who are interested in making certain that lands remain in trust so the heritage of the tribe can be protected, but also provides them with the ability to transfer something of lasting value to their family members.

Thank you for the consideration we know you will give to the Morongo Band's concerns about this important issue.